

THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

May 5, 2003

IN RE:

GUTTERGUARD OF TENNESSEE, INC.

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)

DOCKET NO.
03-00082

ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before Chairman Sara Kyle, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on April 7, 2003, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the "CSD") and GutterGuard of Tennessee, Inc. and its affiliate, Dixie Homecrafters of Tennessee, Inc. ("GutterGuard" or the "Company") related to alleged violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statutes.¹ The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(f) authorizes the Authority to initiate proceedings relative to violations of the Do-Not-Call statutes and the TRA rules and regulations promulgated pursuant to the Do-Not-Call statutes.² "Such

¹ See Tenn. Code Ann. § 65-4-401 *et seq.*

² See Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.*

proceedings may include, without limitation, proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction.”³

The CSD’s investigation in this docket commenced after it received a complaint on May 14, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from GutterGuard on May 9, 2002. The CSD provided GutterGuard with notice of this complaint on May 16, 2002. Between June 20, 2002 and February 7, 2003, the CSD received nine additional consumer complaints against GutterGuard, each alleging that a person acting on behalf of GutterGuard made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call register. The CSD provided GutterGuard with notice of each of these complaints.

The proposed Settlement Agreement was negotiated as the result of the CSD’s investigation into the complaints against GutterGuard. The maximum penalty faced by GutterGuard in this docket was \$20,000 arising from the ten complaints. In negotiating the terms and conditions of this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

The corporate headquarters of GutterGuard’s parent company, GutterGuard, Inc., is located in Atlanta, Georgia. GutterGuard employs approximately one hundred (100) persons in the state of Tennessee. GutterGuard registered in the Do-Not-Call Program for the 2002-2003

³ Tenn. Code Ann. § 65-4-405(f).

fiscal year on June 13, 2002. After receiving notice of the complaints, GutterGuard contacted the CSD and expressed an interest in settling this matter and in obtaining technical assistance to assure future compliance with the applicable Tennessee statutes and regulations. In addition, GutterGuard registered its affiliate, Dixie Homecrafters, with the TRA as a telephone solicitor on March 17, 2003.

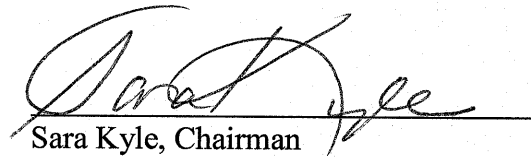
The TRA has received no additional complaints from Tennessee consumers since GutterGuard received notice of the complaints. GutterGuard agreed to pay to the Authority the amount of \$17,000 in settlement of these violations. The first payment of \$5,000 shall be paid to the Office of the Chairman no later than the first business day of the month following the date the panel approves this Settlement Agreement. The remaining \$12,000 shall be paid in six installments of \$2,000, each of which shall be remitted to the TRA no later than the first business day of each month for the next six consecutive months following the first payment.

Gary Hopper, General Counsel of GutterGuard, attended the Authority Conference on April 7, 2003. Lynn Questell, Staff counsel, appeared on behalf of the CSD. Following a discussion with counsel for the parties and a review of the Settlement Agreement, the Directors voted unanimously to accept and approve the Settlement Agreement.

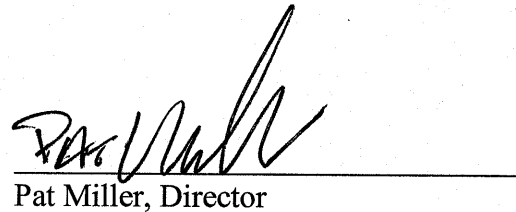
IT IS THEREFORE ORDERED THAT:

1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.
2. The amount of \$17,000 shall be paid by GutterGuard to the TRA. The first payment of \$5,000 shall be paid no later than May 1, 2003. GutterGuard shall make six additional payments of \$2,000, each of which shall be remitted to the TRA no later than the first business day of each month for the next six consecutive months following the first payment.

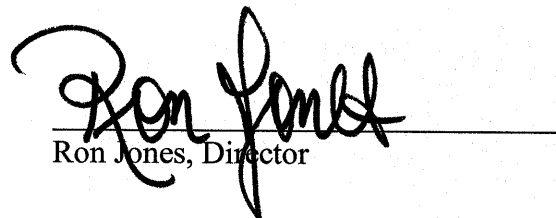
3. Upon payment of the amount of \$17,000 and compliance with the terms of the Settlement Agreement attached hereto, GutterGuard is excused from further proceedings in this matter, provided that, in the event of any failure on the part of GutterGuard to comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this docket.



Sara Kyle, Chairman



Pat Miller, Director



Ron Jones, Director

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:

**Alleged Violations of Tenn. Code Ann. § 65-4-401
et seq. and Rules of Tennessee Regulatory Authority
Consumer Services Division Chapter 1220-4-11**

GutterGuard of Tennessee, Inc.

**DOCKET NO.
03-00082**

**Consumer Services Division
File No. T02-00297
T02-00378
T02-00424
T02-00469
T02-00514
T02-00532
T02-00535
T02-00555
T02-00584
T03-00059**

SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("Authority" or "TRA") and GutterGuard of Tennessee, Inc. ("GutterGuard") and its affiliate, Dixie Homecrafters of Tennessee, Inc. ("Dixie Homecrafters"). This Settlement Agreement pertains to alleged violations of the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations, Tenn. Code Ann. § 65-4-401, *et seq.*, and Tenn. Comp. R. & Regs. 1220-4-11.07, ascertained during the preliminary investigation the CSD conducted in this matter, including ten (10) consumer complaints against GutterGuard received by



the CSD. This Settlement Agreement is subject to the approval of the Directors of the TRA.

The CSD's investigation in this docket commenced after it received a complaint on May 14, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from GutterGuard on May 9, 2002. The CSD provided GutterGuard with notice of this complaint on May 16, 2002.

Between June 20, 2002 and February 7, 2003, the CSD received nine (9) additional consumer complaints against GutterGuard, each alleging that a person acting on behalf of GutterGuard made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call register. The CSD provided GutterGuard with notice of each of these complaints.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11.07(1) prohibit persons from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the TRA of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by GutterGuard in this proceeding is twenty thousand dollars (\$20,000), arising from the ten (10) allegedly improper telephone solicitations.

In negotiating this Settlement Agreement, CSD relied upon the factors stated in Tenn. Code Ann. § 65-4-116(b), including the company's size, financial status, good

faith, and the gravity of the violation. The corporate headquarters of GutterGuard's parent company, GutterGuard, Inc., is in Atlanta, Georgia, with offices in Columbus, Georgia, Charlotte, North Carolina, Greenville, South Carolina, Memphis, Tennessee, Nashville, Tennessee and Philadelphia, Pennsylvania. GutterGuard employs approximately one hundred (100) persons in the state of Tennessee. GutterGuard registered in the Do-Not-Call Program for the 2002-2003 fiscal year on June 13, 2002. After receiving notice of the complaints, GutterGuard contacted the CSD and expressed an interest in settling this matter and in obtaining technical assistance to assure future compliance with the applicable Tennessee statutes and regulations. In addition, GutterGuard registered its affiliate, Dixie Homecrafters, with the TRA as a telephone solicitor on March 17, 2003.

In an effort to resolve the alleged violations revealed during the CSD's investigation, including the complaints represented by the file numbers captioned above and any other complaints whether known or unknown by the CSD prior to the execution of this Settlement Agreement, the CSD and GutterGuard agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

1. GutterGuard neither admits nor denies that the ten (10) complaints against it are true and valid complaints and that it acted in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11.07.
2. Since receiving notice of the complaints that are the subject of this Agreement, GutterGuard has attempted to come into compliance with Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11.07. GutterGuard contacted CSD and

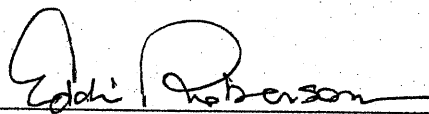
expressed an interest in taking action to prevent noncompliance in the future. In addition, GutterGuard registered its affiliate, Dixie Homecrafters with the TRA as a telephone solicitor on March 17, 2003 and receives a monthly copy of the Do-Not-Call register.

3. GutterGuard agrees to pay on its behalf and on behalf of its affiliate, Dixie Homecrafters, the amount of seventeen thousand dollars (\$17,000.00) in settlement of these complaints. The first payment, in the amount of five thousand dollars (\$5,000.00), shall be remitted to the Office of the Chairman of the TRA no later than the first business day of the month following the date the panel of Directors assigned to this docket approves this Settlement Agreement.¹ The remaining twelve thousand dollars (\$12,000) will be paid by GutterGuard in six (6) installments of two thousand dollars (\$2,000.00) and each shall be remitted to the TRA no later than the first business day of each month for the next six (6) consecutive months. Upon payment of the amount of seventeen thousand dollars (\$17,000.00) in compliance with the terms and conditions of this Settlement Agreement, GutterGuard is excused from further proceedings in this matter.
4. GutterGuard agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations.
5. GutterGuard agrees that a company representative will attend the Authority Conference during which the Directors consider this Settlement Agreement.
6. In the event that GutterGuard fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket.

¹ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, referencing TRA Docket No. 03-00082.

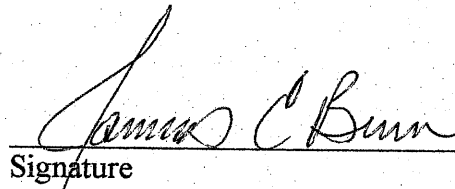
GutterGuard shall pay any and all costs incurred in enforcing the Settlement Agreement.

7. If any clause, provision or section of this Settlement Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
8. This Settlement Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.



Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority

3-27-03
Date



Signature

James E. Brewer
Print Name

President Dixie Home Crafters Tr.
GutterGuard Inc.
Print Title

3-21-03
Date